

Equal Education Opportunity and the Pursuit of “Just Schools”: The Des Moines Independent Community School District Rethinks Diversity and the Meaning of “Minority Student”

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ABSTRACT: Much to the dismay of many judges, attorneys, policymakers, school administrators, and concerned citizens, many K–12 schools are becoming increasingly segregated. Despite the passage of over fifty years since the Supreme Court’s promise in Brown v. Board of Education to provide equal education opportunities for all children, states have failed to make Brown’s promise a reality. The Supreme Court revisited the issue of school desegregation in Parents Involved in Community Schools v. Seattle School District No. 1 and held voluntary, race-based desegregation plans unconstitutional. In response to Parents Involved, public schools across the United States are revising their diversity plans, looking for a constitutional alternative. In an effort to achieve economic and racial diversity in a constitutional manner, the Des Moines Independent Community School District adopted a student-assignment plan that assigns students to schools solely on the basis of the student’s socioeconomic status. Such student-assignment plans may help the nation realize the promise of Brown. Thus, Des Moines’s experience is an instructive case study.

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I. INTRODUCTION

[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

—Brown v. Board of Education¹

Somewhere in Iowa, among the sprawling cornfields, “broad blue skies and small, neat cities” lies a unique history of progressive school-desegregation policies.² Twenty-eight years before *Plessy v. Ferguson*,³ nearly a century before *Brown v. Board of Education*,⁴ and months before Congress ratified the Fourteenth Amendment,⁵ the Iowa Supreme Court struck down a state law mandating school segregation.⁶ In *Clark v. Board of Directors*, it held that the Muscatine School Board of Directors could not deny Susan B. Clark, a twelve-year-old African-American girl, admission to Muscatine Grammar School No. 2, “because of . . . her nationality, religion, [or] color.”⁷ *Clark* marks the first time in U.S. history that a state struck down a law mandating school segregation,⁸ solidifying Iowa’s place as a pioneer on the issue of equal education. Unfortunately, the *Clark* decision did not end

1. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

2. Marcia L. La Ganga, *In Iowa Cornfields, a Left-Tilting Tradition*, L.A. TIMES, Dec. 30, 2007, at A24.

3. *Plessy v. Ferguson*, 163 U.S. 537, 549 (1896) (legitimizing the separate-but-equal doctrine and legalizing racial segregation in public accommodations).

4. *Brown*, 347 U.S. at 495 (deeming separate-but-equal classrooms unconstitutional); see also Erwin Chemerinsky, *The Segregation and Resegregation of American Public Education*, in SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK? 29, 32 (John Charles Boger & Gary Orfield eds., 2005) (“From *Plessy v. Ferguson* in 1896 until *Brown* in 1954, government-mandated segregation existed in every southern state and in many northern states.”).

5. Proclamation No. 13, 15 Stat. 708, 710 (1868). South Carolina was the twenty-eighth state to ratify the Amendment and the last needed for a three-fourths majority. Proclamation No. 8, 15 Stat. 704, 704 (1868); see also *Coleman v. Miller*, 307 U.S. 433, 448–50 (1939) (noting that the Secretary of State proclaimed the Fourteenth Amendment ratified on July 20, 1868, and that Congress adopted a concurrent resolution the next day that “declared the Fourteenth Amendment to be a part of the Constitution”).

6. DAVISON M. DOUGLAS, *JIM CROW MOVES NORTH: THE BATTLE OVER NORTHERN SCHOOL SEGREGATION, 1865–1954*, at 76–77 (2005) (describing the Iowa Supreme Court’s decision in *Clark v. Bd. of Dirs.*, 24 Iowa 266 (1868), that was issued on April 14, 1868, three months prior to the adoption of the Fourteenth Amendment). Iowa ratified the Fourteenth Amendment eleven days prior to the Iowa Supreme Court’s decision. 15 Stat. at 710 (listing dates on which states ratified the Fourteenth Amendment).

7. *Clark*, 24 Iowa at 277.

8. See DOUGLAS, *supra* note 6, at 77 (stating that the Iowa Supreme Court’s decision in *Clark* was “at odds with . . . almost all subsequent nineteenth-century courts”).

school segregation in Iowa or elsewhere; rather it marked the beginning of the struggle for equal education in America.⁹

Arguably, the landmark desegregation case, *Brown v. Board of Education*, has failed.¹⁰ Although the U.S. Supreme Court declared its vision of a public education system “without a ‘white’ school and a [black] school, but just schools” over forty years ago,¹¹ children in America still attend schools that are becoming increasingly segregated.¹² In the fifty-five years since the Court’s historic *Brown* decision, states continue to fail to significantly reduce the lack of diversity in K–12 student bodies.¹³ In light of this failure, judges, attorneys, policymakers, school administrators, and concerned citizens must continue to work for equal education in public schools to fulfill the Supreme Court’s vision.¹⁴

Following *Brown*, many white communities initially avoided desegregation by bluntly refusing to implement a desegregation plan or simply closing the doors to the public schools.¹⁵ This tasked district-court judges with carrying out *Brown*’s mandate amidst fierce opposition in the ensuing decades. In some instances, they would “govern from day to day by decree, according to plans laboriously formulated by the court itself, [and] often in consultation with court-appointed experts.”¹⁶ Nevertheless, not all communities opposed desegregation, and in time many public school

9. *Id.* at 77.

10. Molly S. McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1334, 1334 (2004).

11. *Green v. County Sch. Bd.*, 391 U.S. 430, 442 (1968).

12. See RICHARD KAHLENBERG, ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE 90–96 (2001) (describing the shortcomings of the racial desegregation plans in public schools from the period immediately following *Brown* until the present); GARY ORFIELD & CHUNGMEI LEE, *BROWN AT 50: KING’S DREAM OR PLESSY’S NIGHTMARE?* 2 (2004), available at <http://www.civilrightsproject.ucla.edu/research/reseg04/brown50.pdf> (“There has been a substantial slippage toward segregation in most of the states that were highly desegregated in 1991.”). Minorities are moving to urban areas in increasing numbers, “producing hundreds of newly segregated and unequal schools.” *Id.* at 4. Schools are more segregated today than they were twenty years ago. *Id.* at 2.

13. KAHLENBERG, *supra* note 12, at 90–91. A report published in January 2009 indicates that nearly two out of every five Latino or African-American students attend a school with a ninety- to one-hundred-percent minority population. GARY ORFIELD, *REVIVING THE GOAL OF AN INTEGRATED SOCIETY: A 21ST CENTURY CHALLENGE* 12 (2009), available at http://www.civilrightsproject.ucla.edu/research/deseg/reviving_the_goal_mlk_2009.pdf. In 1988, only one out of every three students attended such a school. *Id.* at 13. The report concludes that “[s]egregation patterns were far worse in 2006 than in 1988.” *Id.*

14. See Stephen J. Caldas & Carl L. Bankston III, *A Re-Analysis of the Legal, Political, and Social Landscape of Desegregation from Plessy v. Ferguson to Parents Involved in Community Schools v. Seattle School District No. 1*, 2007 BYU EDUC. & L.J. 217, 248 (arguing that, based on resegregation patterns, this goal may be “more elusive than ever”).

15. Gabriel J. Chin, *Jim Crow’s Long Goodbye*, 21 CONST. COMMENT. 107, 112–13 (2004).

16. Louise Weinberg, *The New Judicial Federalism*, 29 STAN. L. REV. 1191, 1202 (1977).

districts took the initiative to implement voluntary desegregation plans.¹⁷ Indeed, prior to the Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1*,¹⁸ school districts throughout the United States frequently relied on voluntary, race-based desegregation plans to make the Court's vision in *Brown* a reality.¹⁹ The Court in *Parents Involved*, however, reversed this trend by holding unconstitutional voluntary school-desegregation plans that used race as the sole or determinative factor in assigning students.²⁰ The Court's decision has required many school districts, including the Des Moines Independent Community School District ("Des Moines school district"), to revise their desegregation plans for the plans to remain constitutional.²¹

Now, school administrators in public K–12 schools face a new challenge: providing equal education opportunities to children of all races without using race as the sole or determinative factor in their assignment plans. One possible solution is to assign students on the basis of their socioeconomic status. Assignment plans that decide among students based on their socioeconomic status ("SES plans") address the problem of segregated education by "increasing diversity among students as far as socioeconomic . . . status is concerned"²² and, in effect, "diversifying [student bodies] on the basis of race because of the correlation between race and poverty that exists in America."²³ In practice, school districts that use SES plans create middle-class schools that remedy the basic damage segregated education inflicts on students.²⁴

17. Lisa J. Holmes, Comment, *After Grutter: Ensuring Diversity in K–12 Schools*, 52 UCLA L. REV. 563, 566 (2004).

18. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

19. Genevieve Siegel-Hawley, *The Integration Report*, Issue 4 (Feb. 25, 2008), <http://theintegrationreport.wordpress.com/2008/02/issue-04/>. "[W]ith court-ordered remedies drawing to a close, many schools once again were becoming racially identifiable," and voluntary desegregation plans were seen as a method of "preserving some degree of integration in public education." Rachel F. Moran, *Let Freedom Ring: Making Grutter Matter in School Desegregation Cases*, 63 U. MIAMI L. REV. 475, 475–76 (2009).

20. *Parents Involved*, 551 U.S. at 748 (plurality opinion). Chief Justice Roberts argued that "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Id.*

21. See Craig R. Heeren, "*Together at the Table of Brotherhood*": *Voluntary Assignment Plans and the Supreme Court*, 24 HARV. BLACKLETTER L.J. 133, 136 (2008) (describing the impact of *Parents Involved*); Des Moines Public Schools, *DMPS Considers New Rules for Diversity Plans*, <http://www.dmps.k12.ia.us/whatsnews/diversity.htm> (last visited Apr. 19, 2010) (discussing the *Parents Involved* decision's impact on Des Moines public schools).

22. Genevieve Campbell, Note, *Is Classism the New Racism? Avoiding Strict Scrutiny's Fatal in Fact Consequences by Diversifying Student Bodies on the Basis of Socioeconomic Status*, 34 N. KY. L. REV. 679, 679 (2007).

23. *Id.* at 679–80.

24. Eboni S. Nelson, *The Availability and Viability of Socioeconomic Integration Post-Parents Involved*, 59 S.C. L. REV. 841, 842 (2008).

Prior to *Parents Involved*, the Des Moines school district used a voluntary, race-based diversity plan. In response to *Parents Involved*, the Des Moines school district implemented a SES plan.²⁵ Its goal was to create public schools with diverse student bodies that “teach world-class skills . . . [without including] race as a factor for determining student assignment.”²⁶ As one of roughly seventy school districts nationwide to consider socioeconomic status as a factor in student assignments,²⁷ the Des Moines school district is at the forefront of the socioeconomic integration trend and serves as an instructive case study on the issue of equal education post-*Parents Involved*.

This Note considers whether the Des Moines school district’s diversity plan is a constitutional means of maintaining a racially diverse student body and whether SES plans can provide both an equal education opportunity and an enriched learning environment. Part II describes both the evolution of the constitutional doctrine regarding school desegregation from *Brown* to *Parents Involved* and the evolution of Iowa’s policy on school desegregation. Part III analyzes the constitutionality of the Des Moines school district’s diversity plan in light of *Parents Involved*. This Note argues that SES plans will avoid the Court’s often fatal strict-scrutiny analysis, thus making the Court more likely to find them constitutional.²⁸ Finally, Part IV discusses the desirability and limitations of SES plans as a constitutional alternative to race-based assignment plans.

II. BACKGROUND

Originally, the U.S. Constitution did not contain any provision ensuring that all members of society would receive “equal protection of the laws,” much less equal education opportunities.²⁹ This is not surprising given the

25. DES MOINES INDEP. CMTY. SCH. DIST., DIVERSITY PLAN 1 (2008), <http://www.dmps.k12.ia.us/facts/DiversityPlan.pdf> [hereinafter DIVERSITY PLAN]. The plan distinguishes between students based on whether they are eligible for free and reduced-price lunch. *Id.*; see also Nelson, *supra* note 24, at 842 (“Socioeconomic integration [plans] seek to create middle class schools by minimizing the concentration of low-income students in any given school.”).

26. A HISTORICAL REVIEW OF THE DES MOINES PUBLIC SCHOOL DISTRICT’S DESEGREGATION/INTEGRATION EFFORTS 8 (2008), <http://www.dmps.k12.ia.us/whatsnews/desegplan.pdf>.

27. RICHARD D. KAHLBERG, THE CENTURY FOUND., TURNAROUND SCHOOLS THAT WORK: MOVING BEYOND SEPARATE BUT EQUAL 20–21 (2009), available at <http://www.tcf.org/publications/education/turnaround.pdf>. This is an increase from 2007 when approximately forty schools used SES plans. Robert Tomsho, *More Schools Likely To Spur Diversity via Income*, WALL ST. J., June 29, 2007, at B1.

28. Courts are less likely to hold SES plans unconstitutional because “[u]nder longstanding Fourteenth Amendment jurisprudence, the government’s use of race is held to a tough standard of ‘strict scrutiny,’ while the use of economic status need meet only the more relaxed ‘rational basis’ test.” Richard D. Kahlenberg, *Socioeconomic School Integration*, 85 N.C. L. REV. 1545, 1554 (2007) (citations omitted).

29. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 668 (3d ed. 2006).

fact that U.S. society “routinely discriminated against” African-Americans and women.³⁰ However, in 1868, Congress ratified the Fourteenth Amendment, which “bestowed citizenship on the former slaves, prohibited states from denying any person equal protection [and] ensured that no person could be deprived of life, liberty, or property without due process of law.”³¹ While the Amendment did not contain a specific definition of equal protection, the Court would eventually use the Equal Protection Clause to dismantle the segregated education system, expounding on its interpretation of the Amendment with each new application.

Unfortunately, the Court’s early equal-protection jurisprudence denied many U.S. citizens the Fourteenth Amendment’s promise of equal protection until almost a century later.³² The Court did state in 1918, 1923, and 2000 that “[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.”³³ However, in the context of school segregation, the Court did not interpret the Fourteenth Amendment in a manner consistent with its stated purpose until halfway through the twentieth century in its landmark *Brown* decision.³⁴

Prior to the 1950s, many states and school districts operated under the *Plessy v. Ferguson* “separate-but-equal” doctrine and employed a dual school system divided along racial lines.³⁵ In 1954, the Supreme Court decided *Brown*, ordered the end of school segregation, and declared that “in the field of public education the doctrine of ‘separate but equal’ has no place.”³⁶

Initially, “[s]outhern states openly and aggressively resisted compliance with *Brown*.”³⁷ This required district courts to take an active role in the desegregation process to carry out the Court’s mandate in *Brown* and end

30. *Id.* Many high-profile members of society, from the Founding era to the mid-nineteenth century, regarded African-Americans as “inferior.” See THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 138–43 (William Peden ed., 1954) (expressing the view that lifestyle differences, such as education and conversation, made African-Americans an intellectually inferior race).

31. CHEMERINSKY, *supra* note 29, at 14.

32. See generally *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (ordering the end of school segregation).

33. Christopher R. Green, *The Original Sense of the (Equal) Protection Clause: Pre-Enactment History*, 19 GEO. MASON U. CIV. RTS. L.J. 1, 2 (2008) (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)).

34. See *Brown*, 347 U.S. at 489–95 (detailing the history of the Fourteenth Amendment).

35. Erica J. Rinas, Note, *A Constitutional Analysis of Race-Based Limitations on Open Enrollment in Public Schools*, 82 IOWA L. REV. 1501, 1504–05 (1997).

36. *Brown*, 347 U.S. at 495.

37. CHEMERINSKY, *supra* note 29, at 722.

school segregation.³⁸ The Supreme Court eventually responded to the attempts to undermine *Brown* in *Cooper v. Aaron*, stating that “the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land,” and thus binds the actions of state officials.³⁹ Unfortunately, even with the Court’s strong endorsement of *Brown*, *Cooper* did not end southern resistance efforts.⁴⁰

Only after the Supreme Court heard another school-desegregation case in the mid-1960s⁴¹ and Congress passed the Civil Rights Act of 1964⁴² did the civil-rights movement clearly take hold and the “emphatic” opposition to desegregation begin to dissipate.⁴³ Finally, in 1969, the Supreme Court declared that school boards have “the affirmative duty” to eliminate racial discrimination “root and branch.”⁴⁴

A. IOWA’S APPROACH TO PUBLIC SCHOOL DESEGREGATION
PRIOR TO PARENTS INVOLVED

In 1989, Iowa again demonstrated that it was a pioneer on the issue of school desegregation when it implemented an open-enrollment policy, allowing parents or guardians residing in one school district to enroll their children in a school located in a different district at no cost.⁴⁵ Consistent

38. See, e.g., *Green v. County Sch. Bd.*, 391 U.S. 430, 439–40 (1968) (declaring a student-assignment plan used to frustrate desegregation unconstitutional); *Brown*, 347 U.S. at 495 (overruling *Plessy v. Ferguson* and declaring that “in the field of public education the doctrine of ‘separate but equal’ has no place”); *Clark v. Bd. of Dirs.*, 24 Iowa 266, 277 (1868) (striking down an Iowa state law mandating school segregation). Erwin Chemerinsky even contends that judicial action is required to achieve fully desegregated schools. See generally Erwin Chemerinsky, *The Segregation and Resegregation of American Public Education: The Court’s Role*, 81 N.C. L. REV. 1597 (2003) (arguing that minorities lack the political capital necessary to achieve desegregation using the political process and thus they must resort to the judicial process).

39. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (interpreting the Fourteenth Amendment to guarantee that “[n]o state legislator or executive or judicial officer [could] war against the Constitution without violating his undertaking to support it”). The Court continued by stating that *Brown* cannot be undermined “openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation.” *Id.* at 17; see also CHEMERINSKY, *supra* note 29, at 723 (quoting the Court in *Cooper v. Aaron*).

40. CHEMERINSKY, *supra* note 29, at 723.

41. See *Griffin v. County Sch. Bd.*, 377 U.S. 218, 231 (1964) (declaring that it is unconstitutional for school systems to close instead of desegregating).

42. CHEMERINSKY, *supra* note 29, at 725.

43. Bradley W. Joondeph, *Missouri v. Jenkins and the De Facto Abandonment of Court-Enforced Desegregation*, 71 WASH. L. REV. 597, 600–06 (1996).

44. *Green v. County Sch. Bd.*, 391 U.S. 430, 437–38 (1968).

45. Educ. Dep., 30 Iowa Admin. Bull. 1366–67 (Feb. 27, 2008). The Iowa Administrative Code defines open enrollment as “the procedure allowing a parent/guardian to enroll one or more pupils in a public school district other than the district of residence at no tuition cost.” IOWA ADMIN. CODE r. 281-17.2 (2010).

with the Court's vision in *Brown*,⁴⁶ a number of school districts in Iowa sought to garner the benefits of racially integrated schools⁴⁷ by adopting voluntary desegregation plans.⁴⁸ In fact, policymakers would often limit open enrollment using a policy provision that "allow[ed] districts to deny transfer requests if the move would leave the district 'racially unbalanced.'"⁴⁹ Before *Parents Involved*, many Iowa school districts, including Des Moines, employed voluntary, race-based assignment plans to maintain racially balanced public schools.⁵⁰ Essentially, policymakers viewed these plans as "[o]pen enrollment controls" constituting "the primary way to ensure . . . diversity."⁵¹

46. See McUsic, *supra* note 10, at 1334 (noting that *Brown's* intention was to end "segregation in schools and thereby ensure that educational opportunity would not be rationed according to race").

47. See Gary Orfield, Erica Frankenberg & Lilianna M. Garces, *Statement of American Social Scientists of Research on School Desegregation to the U.S. Supreme Court in Parents v. Seattle School District and Meredith v. Jefferson County*, 40 URB. REV. 96, 103–05 (2008) (discussing the benefits of racially integrated schools).

48. Megan Hawkins, *Speakers Debate Changes in Desegregation Rules*, DES MOINES REG., Jan. 9, 2008, at 3B. Prior to *Parents Involved*, the Des Moines school district used an interdistrict desegregation plan to "decid[e] whether to allow students to transfer in or out of [its] district[.]" and used "race [as] the main factor" when making this decision. *Id.* Given the metropolitan area surrounding Des Moines and that generally, "[m]uch of the cost of minority concentration, to members of both races, occurs *because* of white flight" (from urban areas to the suburbs), it is unsurprising that the Des Moines school district would use interdistrict plans to minimize the effects of white flight and ensure diversity. Carl Bankston III & Stephen J. Caldas, *Majority African American Schools and Social Injustice: The Influence of De Facto Segregation on Academic Achievement*, 75 SOC. FORCES 535, 553 (1996). As a prominent civil-rights attorney pointed out, "[S]ubstantial integration can be accomplished in many places only if the area covered is larger than the city itself. If, on the other hand, the responsibility to integrate schools ends at the city line, *Brown v. Board of Education* in its most immediate application, may become an anachronism." Edgar G. Epps, *City and Suburbs: Perspectives on Interdistrict Desegregation Efforts*, 10 URB. REV. 82, 85–86 (1978) (quoting William L. Taylor, *Metropolitan Approaches to Desegregation*, 13 INTEGRATED EDUC., May–June 1975, at 131, 131).

49. C. Sheldon Smith, *A Bureaucracy Scored*, NAT'L REV., Mar. 29, 1993, at 25, 25–26 (describing Iowa's open-enrollment policy). According to Iowa's past open-enrollment policy, a school was racially imbalanced when the percentage of minority students exceeded that of the community's minority population by fifteen percentage points or more. *Id.*; see also IOWA ADMIN. CODE r. 281-17.6(2) (discussing voluntary diversity plans and court-ordered desegregation plans in Iowa public schools).

50. See Hawkins, *supra* note 48 ("Until now, race has been the main factor, aside from attendance boundaries, that many large Iowa districts use to assign students to schools."); Des Moines Public Schools, *supra* note 21. Prior to 2008, Iowa defined "minority student" as:

[A] student who is a member of one of the following four groups (as used by the federal Department of Education): Black (not of Hispanic origin), Hispanic, American Indian/Alaskan Native, or Asian/Pacific Islander. For purposes of these rules, a student who is biracial or multiracial may be categorized as a minority student.

IOWA ADMIN. CODE r. 281-17.2 (2005).

51. Jason Clayworth, *Bill Advances To Limit Use of Race in Diversity Plans*, DES MOINES REG., Mar. 12, 2008, at B3.

B. RESPONDING TO PARENTS INVOLVED

The Supreme Court's decision in *Parents Involved* represents the most recent major decision regarding the issue of school desegregation and marks the first time the Supreme Court considered an "inclusive race-conscious admissions polic[y] at the K-12 level."⁵² In *Parents Involved*, the Court considered whether the Seattle and Louisville school districts' use of a student's race in voluntary student-assignment plans violated the Fourteenth Amendment's Equal Protection Clause.⁵³ The Court determined the only acceptable use of race in a voluntary student-assignment plan was either to remedy past, intentional segregation or to create diversity in higher education.⁵⁴ Similar to the Des Moines school district, the local school boards in Seattle and Louisville had approved an open-enrollment policy for public schools and "voluntarily adopted student assignment plans that rel[ied] upon race to determine which public schools certain children may attend."⁵⁵ Subject to a small number of exceptions, these plans required the boards, at some point in the admissions process, to make a decision based solely on how a student's race would affect the racial balance of the school's student body.⁵⁶

Therefore, following the *Parents Involved* decision, public school districts with voluntary, race-based student-assignment plans were required to reevaluate the constitutionality of their plans and devise a new means for achieving racial integration.⁵⁷ In direct response to *Parents Involved*,⁵⁸ the

52. Philip T.K. Daniel, Commentary, *An Essay: Not So Much a Counterpoint as a Call for Change: The Decision of Parents Involved in Community Schools v. Seattle School District No. 1 and Its Impact on America's Schools*, 231 EDUC. L. REP. 511, 512 (2008).

53. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 710–11 (2007) (plurality opinion) (stating the issue presented to the Court).

54. *Id.*; see also Michael L. Wells, *Race-Conscious Student Assignment Plans After Parents Involved: Bringing State Action Principles To Bear on the De Jure/De Facto Distinction*, 112 PENN ST. L. REV. 1023, 1025 (2008) ("The issue dividing the two sides is whether race-conscious student assignment plans can avoid or survive 'strict scrutiny' absent a current court order mandating that a deliberately segregated school system be dismantled." (footnote omitted)). The Justices agreed that schools can use a race-conscious student-assignment plan pursuant "to a current court order finding government-sponsored segregation." *Id.* However, only a plurality of the Court found that absent such a court order, race-conscious student-assignment plans are unconstitutional. Orfield, Frankenberg & Garces, *supra* note 47, at 100. In a separate opinion, Justice Kennedy departed from the plurality opinion, recognizing that a plan to achieve racial diversity could survive strict scrutiny in some circumstances. *Id.* He also offered race-neutral alternatives that considered race but did not make the decisions based on the individual racial/ethnic status of a student. *Id.* at 99. His conclusion joined the conclusions of the four dissenting Justices and constituted the controlling opinion on the issue. *Id.* at 100.

55. *Parents Involved*, 551 U.S. at 709–10 (plurality opinion).

56. *Id.* at 711–16 (majority opinion).

57. Siegel-Hawley, *supra* note 19.

58. *Parents Involved*, 551 U.S. at 745–48 (plurality opinion) (holding that voluntary student-assignment plans that employ race as the sole or determinative factor are

Iowa Department of Education (“IDOE”) revised its approach to defining “minority student.” It gave local school districts the authority to decide how to define “minority student” in their individual assignment plans, so long as their plan did not use race as the sole or determinative factor in student assignment.⁵⁹ In addition, the IDOE ordered the Des Moines, Davenport, Waterloo, West Liberty, and Postville school districts to create new student-assignment plans that “replace or supplement the use of race in the student assignment process with a consideration of socioeconomic status.”⁶⁰ Each district had the option to forego creating a new diversity plan but only at the expense of losing the means to regulate open enrollment—an option that could have possibly resulted in increased segregation.⁶¹

On February 26, 2008, the Des Moines school district adopted a new diversity plan that only considers a student’s socioeconomic status when making an assignment decision.⁶² Specifically, the district defined “minority

unconstitutional); see Des Moines Public Schools, *supra* note 21 (discussing how the Des Moines school district would switch to a SES plan in light of *Parents Involved*).

59. IOWA ADMIN. CODE r. 281-17.2 (2010). The statute now reads:

“Minority student” shall be defined by a local school board in its diversity plan, and may include consideration of any one characteristic or a combination of any of the following characteristics except that race may not be either the sole or the determinative characteristic: socioeconomic status, ethnicity/national origin, English language learner status, or race.

Id.

60. The Civil Rights Project, *One Year Later: Civil Rights Project/Proyecto Derechos Civiles at UCLA Reflects on the Anniversary of the Supreme Court’s Voluntary Integration Decision*, <http://www.civilrightsproject.ucla.edu/policy/court/voltint-anniversary.php> (last visited Apr. 20, 2010).

61. Andrew Wind, *Board Approves Diversity Plan*, COURIER (Waterloo, Iowa), Feb. 12, 2008, at A1.

62. See generally DIVERSITY PLAN, *supra* note 25, at 1 (defining “minority student” by socioeconomic status). Specifically, the new diversity plan will exclude schools from participating in interdistrict open enrollment when a school’s percentage of students qualifying for free or reduced-price lunches exceeds the overall district’s percentage of students qualifying for free or reduced-price lunches by ten percent. *Id.* at 2. To carry out this balancing, the plan permits the school district to regulate “[o]pen enrollment out of the District and open enrollment into the District.” *Id.*

The Des Moines school district, however, takes a different approach to intradistrict transfer assignments. *Id.* at 3. In intradistrict plans, the school district limits the use of socioeconomic status as the sole factor to the regulation of “within district open enrollment applications.” *Id.* Unlike the interdistrict plan, when making an intradistrict assignment decision the school district will consider, in addition to a student’s socioeconomic status, “factors that aim to increase diversity and reduce racial and economic isolation.” *Id.* For the purposes of this Note, this distinction is important only insofar as the legal issues addressed arise from the Des Moines school district’s use of a student’s socioeconomic status as the sole factor to regulate open enrollment. The benefits and limitations that flow from a SES plan are substantially similar whether the plan is interdistrict or intradistrict. Scott Christopher McLeod, *Class-Based Desegregation Plans: Are They Likely To Improve Student Academic Achievement?* (Dec. 2000) (unpublished Ph.D. thesis, The University of Iowa) (on file with the Iowa Law Review) (“Implementation of interdistrict plans could be expected to have the same benefits

student” as “students eligible for free and reduced price lunches.”⁶³ With nearly two-thirds of the K–12 public-school students in Des Moines qualifying for free or reduced-price lunches⁶⁴ and minorities accounting for about forty percent of the student population,⁶⁵ the district decided it could best ensure the opportunity for an equal education through a SES plan.⁶⁶

III. AN ANALYSIS OF THE CONSTITUTIONALITY OF THE DES MOINES SCHOOL DISTRICT’S SES PLAN FOLLOWING *PARENTS INVOLVED*

The Equal Protection Clause of the Fourteenth Amendment provides that a state shall not “deny to any person within its jurisdiction the equal protection of the laws.”⁶⁷ In *Parents Involved*, the Court used the Fourteenth Amendment to strike down two diversity plans that employed race-conscious desegregation strategies.⁶⁸ To ensure their student-assignment plans are constitutional, policymakers and school administrators must take the *Parents Involved* decision into account and tailor their plans to its interpretation of the Fourteenth Amendment.⁶⁹ The Des Moines school district did just that by implementing a SES plan, and thus its plan is consistent with the Court’s decision in *Parents Involved*.

and drawbacks as intradistrict plans, including increased student achievement of low SES students, increased potential for social networking between poor students and more affluent peers, and increased alienation of higher SES parents.” (citations omitted)).

63. DIVERSITY PLAN, *supra* note 25, at 1 (determining that “‘minority student’ for purposes of regulating between district open enrollment [is] defined using students’ socioeconomic status”). In determining a student’s socioeconomic status the district’s diversity plan will use the measure established for “free and reduced price lunch under the National School Lunch Program.” *Id.* The National School Lunch Program provides that “children from families with incomes at or below 130 percent of the poverty level are eligible for free meals, and those with incomes between 130 percent and 185 percent of the poverty level are eligible for reduced priced meals.” IOWA DEP’T OF EDUC., THE ANNUAL CONDITION OF EDUCATION REPORT 57 (2009), available at http://www.iowa.gov/educate/index.php?option=com_docman&task=cat_view&gid=646&Itemid=1563.

64. See FREE/REDUCED AND MINORITY 2007–2008, at 1 (2008), <http://www.dmps.k12.ia.us/facts/freereducedlunch.pdf> (listing the percentage of students who are eligible for free or reduced-price lunches at each Des Moines public school).

65. *Id.*

66. DIVERSITY PLAN, *supra* note 25, at 1; see also DES MOINES SCH. BD., DES MOINES DIVERSITY PLAN: OPTIONS FOR CONSIDERATION, <http://www.dmps.k12.ia.us/whatsnews/diversityplan.pdf> (presenting options for a diversity plan); DMPS DIVERSITY SURVEY RESULTS (2008), <http://www.dmps.k12.ia.us/whatsnews/Diversity%20Survey%20Results.pdf> (presenting results of a survey regarding diversity in the Des Moines school district). The School Board officially adopted the plan on February 19, 2008. DIVERSITY PLAN, *supra* note 25, at 1.

67. U.S. CONST. amend. XIV, § 1.

68. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 747–48 (2007) (plurality opinion) (holding that two plans to remedy de facto segregation in public schools unconstitutional).

69. See Siegel-Hawley, *supra* note 19 (describing school districts’ reactions to *Parents Involved*).

A. THE EQUAL-PROTECTION DOCTRINE FOLLOWING PARENTS INVOLVED

In *Parents Involved*, the Court dealt with two voluntary, race-based desegregation plans.⁷⁰ Both Louisville and Seattle relied solely or determinatively on racial classifications in their desegregation plans, and whenever a state uses racial classifications—even if the classification benefits minorities—the Court uses strict scrutiny to analyze the issue.⁷¹ This standard requires the state to establish that the plans are “narrowly tailored” to meet a “compelling government purpose.”⁷² While diversity in the context of education can constitute a compelling state interest,⁷³ the Court has made it clear that the term diversity “is not an interest in simple ethnic diversity,” but a “consideration of ‘a far broader array of qualifications and characteristics.’”⁷⁴

The school districts in *Parents Involved* failed to consider race as one factor among a broader array; rather, race was the only factor they considered.⁷⁵ The Court thus found that Seattle’s and Louisville’s plans used racial classifications as a means to achieve racial balancing—a “patently unconstitutional” end—and ultimately held the plans unconstitutional for failing to establish a compelling state interest.⁷⁶ Writing for a plurality, Chief Justice Roberts held that a voluntary, race-based admissions plan designed to

70. *Parents Involved*, 551 U.S. at 711–16.

71. *Grutter v. Bollinger*, 539 U.S. 306, 351 (2003) (reaffirming the strict-scrutiny analysis used in *Korematsu v. United States*, 323 U.S. 214 (1944)); *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003) (“[A]ll racial classifications reviewable under the Equal Protection Clause must be strictly scrutinized.” (quoting *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 224 (1995))); *Korematsu*, 323 U.S. at 216 (applying strict scrutiny to racial classifications); CHEMERINSKY, *supra* note 29, at 694 (“It now is clearly established that racial classifications will be allowed only if the government can meet the heavy burden of demonstrating that the discrimination is necessary to achieve a compelling government purpose.”); *see also Adarand Constructors*, 515 U.S. at 226 (“[T]he purpose of strict scrutiny is to ‘smoke out’ illegitimate uses of race.” (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion))); *Croson*, 488 U.S. at 493 (invalidating a program that required contractors to contract with minority-owned businesses); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 273 (1986) (invalidating a policy that used racial preferences in making teacher layoff decisions).

72. CHEMERINSKY, *supra* note 29, at 694–95 (“[T]he government must show an extremely important reason for its action *and* it must demonstrate that the goal cannot be achieved through a less discriminatory alternative”).

73. *Parents Involved*, 551 U.S. at 722 (“The second government interest we have recognized as compelling for purposes of strict scrutiny is the interest in diversity in higher education upheld in *Grutter* . . .” (citation omitted)); *see also* Charles U. Smith, *Public School Desegregation and the Law*, 54 SOC. FORCES 317, 317 (1975) (“[P]ublic education is of prime importance . . . [I]t can provide a milieu which enhances the democratic ideal by the association and cooperation of persons of diverse racial, ethnic, and socioeconomic backgrounds, which in turn, should foster mutual respect and understanding so essential in a true democracy.”).

74. *Grutter*, 539 U.S. at 324–25 (quoting *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1975) (Powell, J.) (plurality opinion)); *Parents Involved*, 551 U.S. at 722.

75. *Parents Involved*, 551 U.S. at 723.

76. *Id.* Additionally, the plans also failed strict scrutiny’s narrow-tailoring requirement. *See infra* notes 84–86 and accompanying text (reviewing the Court’s discussion of narrow tailoring).

undo the de facto segregation that housing patterns caused was unconstitutional.⁷⁷ Roberts's opinion essentially "rejected all race-based measures designed to promote student body diversity."⁷⁸

Justice Kennedy, however, could not sign on to this conclusion.⁷⁹ His concurrence provided the crucial fifth vote and limited the scope of the decision, stating, "[in] the administration of public schools by the state and local authorities it is permissible to consider the racial makeup of schools and to adopt general policies to encourage a diverse student body, one aspect of which is its racial composition."⁸⁰ He continued, adding that the Court's ruling "should not prevent school districts from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds."⁸¹ In his concurrence, Justice Kennedy aligned himself with the four dissenting justices, "holding that integrated education was a compelling educational interest of school districts and could be pursued, quite intentionally, through some other methods."⁸² As the controlling vote, Justice Kennedy's opinion provides the most guidance regarding the future impact of the Court's decision.⁸³

77. *Parents Involved*, 551 U.S. at 747–48 (plurality opinion). The Court distinguishes "between de jure (i.e., state-supported) segregation and de facto segregation (i.e., segregated schools for which the state is not responsible)." Wells, *supra* note 54, at 1025. "In *Brown v. Board of Education*, the Court attempted to eradicate de jure segregation and its effects on the public school system." Heeren, *supra* note 21, at 144. Since the Seattle school district failed to show that it was segregated by law, the Court held that Seattle's student-assignment plan fell "outside the province of de jure remediation." *Id.* at 146.

78. Ilya Shapiro, *A Faint-Hearted Libertarian at Best: The Sweet Mystery of Justice Anthony Kennedy*, 33 HARV. J.L. & PUB. POL'Y 333, 347 (2010) (reviewing HELEN J. KNOWLES, *THE TIE GOES TO FREEDOM: JUSTICE ANTHONY M. KENNEDY ON LIBERTY* (2009)).

79. *Id.*

80. *Parents Involved*, 551 U.S. at 788 (Kennedy, J., concurring). When reading Justice Roberts's plurality opinion and Justice Kennedy's concurring opinion, it is important to keep in mind the principle the Supreme Court put forth in *Marks v. United States*. In *Marks*, the Court declared that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'" *Marks v. United States*, 430 U.S. 188, 193 (1977) (citation omitted).

81. *Parents Involved*, 551 U.S. at 798 (Kennedy, J., concurring).

82. ORFIELD, *supra* note 13, at 8.

83. Daniel, *supra* note 52, at 515–17. Of course, it is possible that Justice Sotomayor's replacement of Justice Souter could precipitate a change in the Court's position on public-school desegregation; however, "[s]ince Justice Souter was considered one of the 'liberal' justices, it has been speculated that the appointment of Sotomayor likely won't shift the overall balance of the Court." See generally *Meet Supreme Court Justice Sonia Sotomayor*, ILL. EMP. L. LETTER (Ford & Harrison LLP, Chi., Ill.), Sept. 2009, at 6 (speculating as to how Justice Sotomayor's appointment will affect the Court's decisions). Similarly, it is possible that Justice Stevens's replacement could change the Court's position on public-school desegregation. At the time of this publication, however, the Senate has not confirmed his replacement. Peter Baker, *Obama Meets with Senators in Effort to Speed Court Choice*, N.Y. TIMES, Apr. 22, 2010, at A16.

In addition to finding that the school districts lacked a compelling state interest for their desegregation plans, the Court also found that the plans failed to meet strict scrutiny's narrow-tailoring requirement because they sought only a "limited notion of diversity."⁸⁴ Justice Roberts described narrow tailoring as a way to "ensure that the use of racial classifications was indeed part of a broader assessment of diversity."⁸⁵ The Court ultimately found that the Seattle and Louisville plans were not narrowly tailored to a compelling state interest because neither used race as part of a larger effort to achieve diversity.⁸⁶ Thus, both were unconstitutional.

Conversely, the Court generally does not impose the same strict-scrutiny analysis on plans that avoid using race-based classifications like, for instance, the SES plan implemented in the Des Moines school district.⁸⁷ Instead, the Court reviews the plans using a rational-basis standard—a much less demanding requirement that requires policymakers to merely "articulate a policy rationally related to a legitimate state interest."⁸⁸ In practice, the Court will generally strike down a law or policy under this standard only when it achieves its purpose in a "patently arbitrary or irrational way."⁸⁹ Therefore, avoiding strict scrutiny is generally the most effective way to ensure a student-assignment plan's constitutionality.⁹⁰

In some circumstances, however, the Court will apply strict scrutiny to a school-diversity plan that is race-neutral on its face. If the Court determines that a state designed a policy to achieve a racially discriminatory purpose, then it will apply a strict-scrutiny standard when evaluating that policy's constitutionality, even if the policy is facially neutral.⁹¹ The Supreme Court's equal-protection jurisprudence suggests the Court may subject socioeconomic-integration efforts to strict scrutiny if schools employ such efforts as a proxy for race.⁹² For this reason, despite appearing neutral on its

84. *Parents Involved*, 551 U.S. at 723.

85. *Id.*

86. *Id.* at 733–35.

87. Campbell, *supra* note 22, at 683 ("Socioeconomic classifications, unlike racial classifications, are not inherently suspect and therefore do not trigger strict scrutiny under a court's review.")

88. *Id.* (citing *City of New Orleans v. Duke*, 427 U.S. 297, 303 (1976)).

89. *Id.*; see also CHEMERINSKY, *supra* note 29, at 669–73, 677–80 ("Rational basis is the minimum level of scrutiny . . . under rational basis review, a law will be upheld if it is rationally related to a legitimate government purpose.")

90. Heeren, *supra* note 21, at 165 ("[I]f the program is wholly race-neutral, it will avoid strict scrutiny review and almost certainly be found to be constitutional pursuant to a rational basis standard of review.")

91. See *Washington v. Davis*, 426 U.S. 229, 240–41 (1976) (noting that a racially discriminatory purpose is sufficient to subject a law to strict scrutiny—even if the law appears facially neutral).

92. *Hunter v. Underwood*, 471 U.S. 222, 228 (1985) ("Once racial discrimination is shown to have been a 'substantial' or 'motivating' factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this

face—which would normally serve as protection from strict scrutiny’s fatal application—opponents may be able to challenge the Des Moines school district’s plan by arguing that it is using socioeconomic status as a proxy for race.⁹³ If the Court finds this argument persuasive, it will likely apply a strict-scrutiny standard when evaluating the plan’s constitutionality.⁹⁴

B. *THE DES MOINES SCHOOL DISTRICT’S SES PLAN IS A CONSTITUTIONAL METHOD FOR ACHIEVING DIVERSITY*

To successfully challenge the constitutionality of the Des Moines school district’s SES plan, a student (or his or her parent or guardian) must prove that the school board implemented the plan with the actual intention to discriminate between students on the basis of race.⁹⁵ If the student successfully proves a discriminatory intent, then the Court will apply strict scrutiny and almost certainly find the SES plan unconstitutional.⁹⁶ Because the Des Moines school district implemented its SES plan in direct response to the Court’s mandate in *Parents Involved*, it could be at risk for such a challenge as courts may have difficulty looking past the timing of the policy change when searching for a nondiscriminatory purpose.⁹⁷ This risk,

factor.”); *Davis*, 426 U.S. at 240–42; see also CHEMERINSKY, *supra* note 29, at 710–20 (describing the requirement for proof of discriminatory purpose).

93. Kimberly Jenkins Robinson, *The Constitutional Future of Race-Neutral Efforts to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*, 50 B.C. L. REV. 277, 282 (2009) (“[P]roponents contend that race-neutral plans [like SES plans] are constitutional because they do not rely on the race of individual students, opponents argue that such plans are unconstitutional because they use other factors as a proxy for race.” (footnotes omitted)).

94. See *Davis*, 426 U.S. at 242 (noting that a facially neutral law with a discriminatory purpose will likely be subjected to strict scrutiny); see also *Lawrence v. Texas*, 539 U.S. 558, 600 (2003) (Scalia, J., dissenting) (discussing the applicability of strict scrutiny).

95. See Campbell, *supra* note 22, at 682–83 (noting that SES plans are only subject to rational-basis review “unless the Court were to determine that the actual purpose of the plan was [to discriminate]”).

96. *Id.*; see *Davis*, 426 U.S. at 242 (noting that a plaintiff can demonstrate discriminatory intent with evidence of systematic exclusion, even if the law is neutral on its face); *Akins v. Texas*, 325 U.S. 398, 403–04 (1945) (“A purpose to discriminate must be present which may be proven by systematic exclusion of eligible jurymen of the proscribed race or by unequal application of the law to such an extent as to show intentional discrimination.”); *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943) (“[L]egislative classifications or discrimination based on race alone has often been held to be a denial of equal protection.”).

97. Campbell notes the following about establishing discriminatory intent:

If subsequent to implementing a socioeconomic preference admission program, a school board publicly admits to doing so as a result of its inability to take race into consideration during admissions [the Court] would most likely hold that program subject to strict scrutiny review because it would be difficult to prove any purpose other than a discriminatory one under those circumstances.

Campbell, *supra* note 22, at 699. For additional discussion, see Jillian Melchior, *Iowa Redefines “Minority” in Wake of U.S. Supreme Court Decision*, SCH. REFORM NEWS, May 1, 2008, http://www.heartland.org/schoolreform-news.org/Article/23121/Iowa_Redefines_Minority_in_Wake_of_US_Supreme_Court_Decision.html, for a suggestion that the Iowa Department of Education’s

however, is limited, as evidence of a nondiscriminatory purpose will enable courts to find the Des Moines school district's SES plan constitutional. The Supreme Court has made it clear that demonstrating a discriminatory purpose requires proof of the state's desire to discriminate; it is not enough to prove the state acted with the knowledge that the action could have discriminatory consequences.⁹⁸ Therefore, proponents of the Des Moines school district's plan can overcome this challenge by establishing a nondiscriminatory purpose. In the case of the Des Moines school district, proponents can advance at least two arguments that establish a nondiscriminatory purpose for the SES plan.

First, the Des Moines school district's diversity plan states: "The District believes that diversity of all kinds [economic, racial and ethnic] strengthens the educational effectiveness of the school[s]."⁹⁹ While this statement does demonstrate an intent to make racial diversity one of the SES plan's purposes, it expressly purports to make racial diversity *one of several* purposes for the district's diversity plan and is most likely included because of the school district's knowledge of the correlation between socioeconomic status and race.¹⁰⁰ This is not evidence of an intent to use a SES plan as a proxy for race. Instead, it is an acknowledgment of the fact that there is a positive correlation between race and socioeconomic status in the Des Moines public school district.¹⁰¹ Furthermore, the plan itself classifies students solely on the basis of their socioeconomic status, completely ignoring their race.¹⁰² With Justice Kennedy's limiting opinion, the *Parents Involved* decision permits the Des Moines school district to consider race as one factor among others when making its assignment decisions. Therefore, even with the district's intent to implement the plan for the purpose of ensuring racial and ethnic diversity in addition to economic diversity, the Court would most likely review the plan under a rational-basis standard because the SES plan neither uses race as the sole or determinative factor nor socioeconomic status as a proxy for race (which in this context would also make race the sole factor).

new definition of minority student was an attempt to "circumvent" the Supreme Court's decision.

98. *United States v. Armstrong*, 517 U.S. 456, 465 (1996) (requiring proof of both discriminatory purpose and effect in order to sustain an equal-protection challenge); Campbell, *supra* note 22, at 696–700; *see also* CHEMERINSKY, *supra* note 29, at 710–15 ("[A] facially race neutral law requires showing both discriminatory purpose and discriminatory effect.").

99. DIVERSITY PLAN, *supra* note 25, at 1.

100. FREE/REDUCED AND MINORITY 2007–2008, *supra* note 64, at 1 (indicating a positive correlation between minority and low-income enrollment); *see also* IOWA DEP'T OF EDUC., *supra* note 63, at 49–72 (reporting enrollment trends using characteristics such as race and ethnicity, English-language-learner status, special education, and eligibility for free or reduced-price school meals).

101. *See infra* Appendix (discussing the relationship between minority enrollment and student poverty levels).

102. DIVERSITY PLAN, *supra* note 25, at 1.

Second, the Des Moines school district may be able to demonstrate a nondiscriminatory purpose and avoid strict scrutiny by showing that its SES plan will significantly impact student achievement.¹⁰³ Arguably, this is an even stronger argument in favor of the plan's constitutionality. Studies suggest that high concentrations of low-income students in schools results in decreased academic performance.¹⁰⁴ The Des Moines school district's SES plan combats this problem by creating an economically diverse student population for the purpose of providing a learning environment that "strengthens the educational effectiveness of the school[s]"¹⁰⁵ because "[y]oung people are far better prepared for the future when they attend school in an educational setting that reflects society's diversity."¹⁰⁶ Because the district can demonstrate that it used a SES plan to combat a known impediment to student success, its SES plan can better withstand an equal-protection challenge. Implementing a plan that classifies students according to socioeconomic status—a class that does not receive strict-scrutiny analysis—for the purpose of improving student achievement, which is an expressly race-neutral purpose, is evidence that the district is not using the SES plan for a racially discriminatory purpose and is thus a constitutional method for assigning students.

103. Meaghan Hines, Note, *Fulfilling the Promise of Brown? What Parents Involved Means for Louisville and the Future of Race in Public Education*, 83 NOTRE DAME L. REV. 2173, 2214 (2008).

104. See Emily Bazelon, *The Next Kind of Integration*, N.Y. TIMES, July 20, 2008, § MM (Magazine), at 38, available at <http://www.nytimes.com/2008/07/20/magazine/20integration-t.html?n=Top/Reference/Times%20Topics/Subjects/D/Discrimination&pagewanted=all> (describing studies that suggest when high concentrations of economically disadvantaged kids attend school together all the students at the school tend to learn less). One economist found:

[W]hen more than half the students were low-income, only 1.1 percent of schools consistently performed at a "high" level (defined as two years of scores in the top third of the U.S. Department of Education's national achievement database in two grades and in two subjects: English and math). By contrast, 24.2 percent of schools that are majority middle-class met [that] standard.

Id.

105. DIVERSITY PLAN, *supra* note 25, at 1.

106. *Id.* Studies support this statement by showing the correlation in student success rates is not related to integration between African-Americans and whites per se, but between poor African-Americans and middle-class whites, which makes economic integration a seemingly more beneficial option in terms of student success rates than racial integration alone. RICHARD D. KAHLBERG, CENTURY FOUND., ISSUE BRIEF: A NEW WAY ON SCHOOL INTEGRATION 7 (2006), available at <http://www.tcf.org/publications/education/schoolintegration.pdf>. Furthermore, Kahlenberg found that "[t]he lower levels of achievement among the poor translate into lower levels of attainment (length of schooling), including high school graduation" and that "[t]he large gap between rich and poor in student achievement and attainment translates into large differences in income and wealth among adults, which will, in turn, affect the life chances of their children." KAHLBERG, *supra* note 12, at 18.

IV. SES PLANS: KEEPING THE PROMISE OF *BROWN* WHILE
IMPROVING ACADEMIC ACHIEVEMENT

Many scholars promote economic integration and SES plans as “an effective alternative to race-based integration strategies.”¹⁰⁷ Even though race is not a factor, minority students will directly benefit as a result of the implementation of a SES plan because they increase both socioeconomic and racial diversity among students, while improving student achievement in a viable manner.¹⁰⁸

A. CONSTITUTIONAL METHOD FOR ADDRESSING POVERTY AND RACIAL ISOLATION

Undoubtedly, the most certain way to ensure racial diversity is for districts actually to assign students to schools according to their race. However, socioeconomic integration is an effective and constitutional alternative that happens to generate both economic and racial diversity—ensuring that all students have an equal education opportunity.¹⁰⁹ Recent trends indicate that when the levels of student poverty increase, the levels of minority enrollment also increase.¹¹⁰ Therefore, SES plans aimed at “concentrations of poverty” will have a disproportionate impact on racial diversity,¹¹¹ and given the poor educational quality of high-poverty schools, failing to create economically diverse schools could ultimately result in depriving minority children of an equal education opportunity.¹¹² For

107. Hines, *supra* note 103, at 2213; *see also* Kahlenberg, *supra* note 28, at 1555 (“[W]hile there is clearly no better way to ensure a certain racial mix than by using race per se, socioeconomic integration can produce a substantial racial dividend.”); McUsic, *supra* note 10, at 1335 (“Integration, albeit integration by economic class, is the most effective, least expensive way to provide a quality education to all children.”); *cf.* James E. Ryan, *Schools, Race, and Money*, 109 *YALE L.J.* 249, 312 (1999) (noting that if a school is not able to overcome “the obstacles created by concentrated poverty and racial isolation,” the state should allow the students the opportunity to go elsewhere).

108. Hines, *supra* note 103, at 2213.

109. Kahlenberg, *supra* note 28, at 1545. Racial and ethnic groups are disproportionately disadvantaged according to socioeconomic factors. Campbell, *supra* note 22, at 679–81. Therefore, using SES plans often affects minority students disproportionately, resulting in racial diversity—albeit less racial diversity than that achieved under race-based plans. Nelson, *supra* note 24, at 841; *see also* McUsic, *supra* note 10, at 1335 (contending that the best method for achieving equal educational opportunity is to use class-based integration). Even Gary Orfield, a long-time advocate for equal education, has remarked that “[s]egregated nonwhite schools usually are segregated by poverty as well as race.” ORFIELD, *supra* note 13, at 6.

110. ORFIELD, *supra* note 13, at 14.

111. Kahlenberg, *supra* note 28, at 1555–58.

112. *See supra* Part III.A (discussing *Parents Involved*). Statistics show that public schools with high concentrations of African-American and Hispanic students are more than three times as likely to be high-poverty schools and twelve times more likely to be schools where almost the entire population is poor. NAACP LEGAL DEF. & EDUC. FUND, *LOOKING TO THE FUTURE: VOLUNTARY K–12 SCHOOL INTEGRATION* 13–14 (2005), available at http://www.naacpldf.org/content/pdf/voluntary/Voluntary_K-12_School_Integration_Manual.pdf; *see also* KAHLENBERG, *supra* note 27, at 11 (producing similar figures).

instance, students attending a high-poverty school are more likely to encounter teachers seeking to transfer, gang activity, and the absence of parental control.¹¹³ Gary Orfield, a professor at UCLA and co-founder of The Civil Rights Project/Proyecto Derechos Civiles, has found that high-poverty schools “account for most of the nation’s ‘dropout factories,’ where a frightfully large share of the students, especially young men, fail to graduate and too many end up virtually unemployable.”¹¹⁴ Therefore, failing to break up high concentrations of low-income students will likely result in creating racially segregated schools that “tend to have weaker teaching forces [and] more student instability . . . factors that militate against academic advancement.”¹¹⁵ *Parents Involved* is a positive step forward in reversing this trend because it moves the focus away from race and toward the more pressing issue of high-poverty concentrations within schools.¹¹⁶

Nationally, there is a positive correlation between individual socioeconomic status and individual minority status, as well as a positive correlation between a school’s socioeconomic status and minority concentrations.¹¹⁷ Similarly, a report issued in the fall of 2009 indicates that there is a strong positive correlation between minority students and students with a low socioeconomic status in the Des Moines school district.¹¹⁸ Nationally, “African-American and other minority students are almost three times as likely as white students to be low-income.”¹¹⁹ In fact, during the 2006–2007 school year “[a] majority of white students attend[ed] schools where less than 30% of the children [were] poor,” while “40% of black and Latino students attend[ed] schools where 70–100% of the children [were] poor.”¹²⁰ At this point the evidence is hard to overlook. As is the case in Des Moines, schools with high concentrations of minority students are generally more likely to have higher concentrations of low-income students than schools with high concentrations of white students.¹²¹ Therefore, it should

113. ORFIELD, *supra* note 13, at 6.

114. *Id.*

115. Matthew Bigg, *U.S. School Segregation on the Rise: Report*, REUTERS, Jan. 14, 2009, <http://www.reuters.com/article/idUSTRE50D7CY20090114>.

116. KAHLENBERG, *supra* note 12, at 23–46.

117. Mary Jane Lee, *How Sheff Revives Brown: Reconsidering Desegregation’s Role in Creating Equal Educational Opportunity*, 74 N.Y.U. L. REV. 485, 518 (1999) (“[R]ace and poverty are characteristics that frequently correlate with each other.”).

118. See *infra* Appendix (analyzing the relationship between minority enrollment and student poverty levels). A simple statistical analysis of the relationship between the Des Moines school district’s number of minority students and students qualifying for a free or reduced-price lunch conducted in Microsoft Excel yielded a correlation coefficient of 0.76. *Infra* Appendix. A correlation coefficient between 0.7 and 0.9 indicates a “strong” positive correlation between two variables. DEREK ROWNTREE, STATISTICS WITHOUT TEARS: A PRIMER FOR NON-MATHEMATICIANS 169–70 (2004).

119. Kahlenberg, *supra* note 28, at 1545.

120. ORFIELD, *supra* note 13, at 14–15.

121. *Id.* at 15.

come as little surprise that while “economic integration is no guarantee of racial integration,”¹²² it can produce racial diversity and that “the largest impacts may occur where they are needed most”—the schools most lacking in racial diversity.¹²³

*B. EQUAL EDUCATION OPPORTUNITY: IMPROVING STUDENT ACHIEVEMENT
THROUGH SOCIOECONOMIC INTEGRATION*

From an achievement standpoint, there are two reasons school districts should use SES plans like the one implemented by the Des Moines school district.¹²⁴ First, they allow minority children in low-income families to have a “fighting chance at success.”¹²⁵ As Richard Kahlenberg, the leading scholar on the issue of socioeconomic integration, points out, “[B]eing poor and attending schools with classmates who are poor constitutes a clear ‘double handicap.’”¹²⁶ Recent scholarship indicates that socioeconomic status of a student’s fellow classmates is one of the most-important factors contributing to student achievement.¹²⁷ Therefore, schools that give low-income students the opportunity to attend middle-class schools will have a “significant impact on [that student’s] life chances, mostly because of its effects on academic performance.”¹²⁸ SES plans directly address this handicap because they improve student achievement and increase the likelihood of success without reducing the achievement of middle-class students.¹²⁹

Second, SES plans expose children to diverse individuals, preparing them to participate in an increasingly diverse world.¹³⁰ Kahlenberg argues that “socioeconomic integration, and the racial integration it entails, is likely to produce a more cohesive and humane society, one in which people are less likely to view one another as ‘others.’”¹³¹ He suggests that after children

122. Duncan Chaplin, *Estimating Impact of Economic Integration of Schools on Racial Integration, in DIVIDED WE FAIL: COMING TOGETHER THROUGH PUBLIC SCHOOL CHOICE* 87, 102 (2002).

123. *Id.*

124. Rekha Basu, *Greater Good Should Be Goal of School Desegregation*, TUCSON CITIZEN, Feb. 28, 2008 (on file with the Iowa Law Review). On both of these points, studies indicate that “the social class of a student’s classmates matters more than their race.” KAHLENBERG, *supra* note 12, at 36.

125. Basu, *supra* note 124.

126. KAHLENBERG, *supra* note 12, at 25.

127. *See id.* (stating that “a school with a high concentration of poverty poses a second, independent disadvantage” to students); Myron Orfield, *Choice, Equal Protection, and Metropolitan Integration: The Hope of the Minneapolis Desegregation Settlement*, 24 *LAW & INEQ.* 269, 281 (2006) (describing student achievement in schools segregated by socioeconomic status).

128. KAHLENBERG, *supra* note 12, at 25.

129. *Id.* at 25–26. Furthermore, studies suggest that as long as schools remain “predominantly middle class,” the performance of middle-class students is not hindered by the presence of economically disadvantaged peers, even though low-income students improve their performance in such an environment. *Id.* at 26.

130. Basu, *supra* note 124.

131. KAHLENBERG, *supra* note 12, at 43.

attend racially desegregated schools they are more likely to develop friendships with members of another race, live in an integrated neighborhood, and refrain from expressing negative views about members of another race.¹³² Children who attend racially isolated schools will not gain cross-racial or cross-cultural understanding and, thus, will struggle to participate in an increasingly diverse society.¹³³ Ultimately, SES plans can create a racially diverse student body without discriminating on the basis of race, adhere to Justice Roberts's mandate in *Parents Involved*,¹³⁴ and avoid "the balkanizing effect that the use of race itself can entail."¹³⁵

C. VIABILITY OF SES PLANS: CONTEXT MATTERS

As the Court perceptively stated in *Green v. County School Board*, "There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance."¹³⁶ While the Des Moines school district's SES plan can serve as a model for other school districts, the viability of any SES plan is contingent upon the socioeconomic and racial composition of the community in which it is implemented.¹³⁷ In practice, the viability of class-based student-assignment policies will differ from school district to school district.¹³⁸

Richard Kahlenberg and Dr. Scott McLeod, an Associate Professor of Educational Administration at Iowa State University, note that the success of

132. *Id.* at 44–45.

133. Nelson, *supra* note 24, at 848.

134. Justice Roberts stated that "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (plurality opinion).

135. KAHLENBERG, *supra* note 12, at 45.

136. *Green v. County Sch. Bd.*, 391 U.S. 430, 439 (1968). While the Court in *Green* was referring to the process of integrating across races, its insight would seem to apply equally to integration across economic classes. See Robinson, *supra* note 93, at 339 ("[S]ocioeconomic integration plans will advance diversity and reduce racial isolation in some districts but not in others. Like all race-neutral measures, . . . success . . . depends on the particular demographics and circumstances in the district." (footnotes omitted)).

137. KAHLENBERG, *supra* note 12, at 256–57. For a useful comparison, see generally RICHARD D. KAHLENBERG, THE CENTURY FOUND., RESCUING *BROWN V. BOARD OF EDUCATION*: PROFILES OF TWELVE SCHOOL DISTRICTS PURSUING SOCIOECONOMIC SCHOOL INTEGRATION (2007), available at <http://www.tcf.org/publications/education/districtprofiles.pdf> (profiling twelve school districts using socioeconomic school-integration plans).

138. Derek W. Black, *The Uncertain Future of School Desegregation and the Importance of Goodwill, Good Sense, and a Misguided Decision*, 57 CATH. U. L. REV. 947, 988 (2008) ("[T]here are numerous variations in how one might define socioeconomic integration, how one might pursue it, and the demographics with which a school district will be working."); Caldas & Bankston, *supra* note 14, at 218 ("Many policy makers fail to understand that schools are the products of the social contexts in which they are situated, and are not easily manipulated as instruments to socially reconstruct society.").

a school district's SES plan is a product of the social context in which the school is situated.¹³⁹ In districts with a wide socioeconomic range of students, class-based redistributions of students between schools is a practical approach toward improving the poor academic performance of low-income students.¹⁴⁰ The viability of a SES plan like the one Des Moines uses, however, is contingent upon the number of low-income students enrolled in a given school district.¹⁴¹ For example, in some urban areas there are few, if any, students to even out social-class distributions across school districts.¹⁴² In this type of situation, school districts may not be able to obtain the benefits of socioeconomic integration, despite their willingness to implement a SES plan.¹⁴³ Therefore, these school districts must consider factors tailored to their specific situation, in addition to the student's socioeconomic status.

While not the case in every circumstance, policymakers should anticipate that the community's reaction to the implementation of a SES plan may not be positive. In a sense, SES plans challenge the belief that wealthy families have the right to live in affluent neighborhoods and send

139. KAHLENBERG, *supra* note 12, at 103 ("In a country with fifteen thousand semiautonomous school districts, varying vastly in population and acreage, implementation of a policy of socioeconomic integration will obviously require adaptation to different realities."); *see* McLeod, *supra* note 62, at 180–81 (noting that SES plans may be "politically unpopular" and increases in student achievement are "politically unlikely without a significant shift in our societal commitment to disadvantaged students and schools"). In his 2000 study, McLeod concluded that "the institution of interdistrict class-based student assignment plans as a means of addressing poor children's low academic achievement probably is not a viable policy option at this time," despite finding that SES plans "hold . . . promise for improving academic achievement of low SES students" and the fact that many urban areas have a need for student redistribution. *Id.* at 176–80. However, because voluntary plans to integrate solely on the basis of race have become unconstitutional, "[SES plans] may be[] the best means of achieving racial integration." KAHLENBERG, *supra* note 12, at 42–45. Arguably, "[s]ome of the most successful school integration programs now operating involve the voluntary transfer of students in high poverty urban districts across district lines to attend higher performing (and racially integrated) suburban public schools." Genevieve Siegel-Hawley, *The Integration Report*, Issue 22 (Dec. 23, 2009), <http://theintegrationreport.wordpress.com/tag/education-policy/>. Therefore, while McLeod's conclusion may have been accurate prior to *Parents Involved*, class-based student-assignment plans such as the plan adopted by the Des Moines school district will probably become an increasingly viable policy option for many school districts following *Parents Involved*.

140. KAHLENBERG, *supra* note 12, at 45 ("[S]ocioeconomic integration is uniquely positioned to promote unity [in education]."); McLeod, *supra* note 62, at 167–80.

141. Black, *supra* note 138, at 987 (noting that the important factors for determining the success of a SES plan are "geographic proximity and parental choice"); McLeod, *supra* note 62, at 167–80.

142. Black, *supra* note 138, at 987.

143. McLeod, *supra* note 62, at 167–80. San Francisco, for example, uses a SES plan, but it has done little to curb resegregation. Black, *supra* note 138, at 987. However, "the failure is not one of socioeconomic plans per se," but rather the way in which the SES plan was implemented in a specific school district. *Id.*

their children to public schools with children from other wealthy families.¹⁴⁴ Therefore, it is both possible and unsurprising “that at some point increased poverty concentrations within schools that previously had few low-income students would result in the estrangement of higher SES parents,” prompting them to pull their children out of the schools that use SES plans.¹⁴⁵

Nevertheless, even with its inherent limitations, a SES plan is less susceptible to political attack than plans discriminating on the basis of race, and despite the possibility of a negative reaction, SES plans make sense for policymakers to adopt and implement.¹⁴⁶ In many contexts, SES plans are both viable¹⁴⁷ and required¹⁴⁸ to ensure that future generations of children realize the promise of *Brown*. Neighborhood schools work well for those who can afford to live in high-income neighborhoods. However, if a family cannot afford to live in such a neighborhood, school assignment based on residence “can be a tremendous source of injustice.”¹⁴⁹ Indeed, for many school districts post-*Parents Involved*, SES plans may be the only available means of providing equal education opportunities to disadvantaged minority students, families, and neighborhoods.¹⁵⁰ Without the help of policymakers, minority children in such districts will inevitably become trapped in poverty; the victims of circumstance.¹⁵¹ There is nothing in the history of socioeconomic balancing to suggest that using SES plans instead

144. Kahlenberg, *supra* note 28, at 1545, 1559–60.

145. McLeod, *supra* note 62, at 175.

146. Nelson, *supra* note 24, at 848 (“[S]chool officials are wise to pursue other measures, such as socioeconomic integration, [because they] are less subject to constitutional and political attack.”).

147. *Id.* at 847–48.

148. See KAHLENBERG, *supra* note 12, at 3–6 (embracing the “common school”—a concept that encourages socioeconomic integration of public schools—as a better plan for creating equal educational opportunities than more traditional methods, such as busing and equal spending); McLeod, *supra* note 62, at 181 (“[U]ntil our nation succeeds in significantly reducing both the number of children who are poor and the concentrations of those children within school districts and school buildings, our children and our society will be the worse for it.”).

149. Richard D. Kahlenberg, *Socioeconomic School Integration Through Public School Choice: A Progressive Alternative to Vouchers*, 45 HOW. L.J. 247, 249 (2002). Similar to Kahlenberg, Leland Ware has observed that “[African-American] families that are confined to segregated neighborhoods by discriminatory practices reside in areas where schools are inferior, home values are lower and routine services such as grocery stores and pharmacies are scarce.” Leland Ware, *Race and Urban Space: Hypersegregated Housing Patterns and the Failure of School Desegregation*, 9 WIDENER L. SYMP. J. 55, 69 (2002).

150. McLeod, *supra* note 62, at 176–81; see also KAHLENBERG, *supra* note 12, at 42–45 (arguing that if voluntary efforts to integrate by race become unconstitutional, “[SES plans] may become the best means of achieving racial integration”).

151. See Kahlenberg, *supra* note 149, at 249 (noting that “it is unfair to trap poor kids in bad schools”).

of race-based diversity plans will not work.¹⁵² Therefore, if given the opportunity, policymakers in situations similar to that of the Des Moines school district should implement SES plans to ensure that each state delivers on the promise to provide education to all students on equal terms.

V. CONCLUSION

While it may not be possible or preferable¹⁵³ to completely integrate public schools, judges, attorneys, policymakers, school administrators, and concerned citizens still have a duty to work toward the creation of a public education system of “just schools”—schools that do not exclude students simply because they are not white or wealthy.¹⁵⁴ Their voluntary efforts are the only hope for achieving *Brown’s* promise in the future,¹⁵⁵ and their efforts will only succeed through reform “that directly addresses racial isolation and poverty.”¹⁵⁶

Parents Involved challenged policymakers to rethink their desegregation plans, spawning a new generation of fresh diversity efforts among school districts. The Des Moines school district answered the Court’s challenge when it implemented a SES plan and resumed its position as a pioneer on the issue of school diversity.

Immediately following *Brown*, there was some concern as to whether the Court’s promise could reach de facto segregation.¹⁵⁷ Over fifty-five years later, these concerns remain valid as school districts continue to search for the answer to America’s struggle to provide children with equal education opportunities. Maybe the answer to this struggle lies somewhere among the sprawling cornfields, “broad blue skies and small, neat cities” of Iowa.¹⁵⁸

152. Caldas & Bankston, *supra* note 14, at 219.

153. *Lee v. Macon County Bd. of Educ.*, 267 F. Supp. 458, 469 n.16 (M.D. Ala. 1967) (“There can be segregation without immoral discrimination against anyone. Integration of all human life . . . would destroy humanity . . .”).

154. *See Green v. County Sch. Bd.*, 391 U.S. 430, 442 (1968) (requiring the school board to “fashion steps which promise realistically to convert promptly to a system without a ‘white’ school and a [black] school, but just schools”). Justice Kennedy noted in a concurring opinion that the Court’s decision in *Parents Involved* “should not prevent school districts from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds.” *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 798 (2007) (Kennedy, J., concurring).

155. *See Black*, *supra* note 138, at 948 (noting that desegregation is becoming increasingly a matter of discretion for the vast majority of school districts).

156. *BROWN V. BOARD OF EDUCATION: THE CHALLENGE FOR TODAY’S SCHOOLS* 12 (Ellen Condliffe Lagemann & LaMar P. Miller eds., 1996) (1995) (emphasis added).

157. Marian Wright Edelman, *Southern School Desegregation, 1954–1973: A Judicial-Political Overview*, 407 ANNALS AM. ACAD. POL. & SOC. SCI. 32, 34 (1973) (“Although a majority of Americans endorsed the principle of the *Brown* decision, there was no national force sufficient to overcome local resistance.”).

158. La Ganga, *supra* note 2.

APPENDIX: DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT
2007–2008

School Name	Minority Student Percentage	Free/Reduced Price Lunch Student Percentage
Moulton ES*	70.70%	87.36%
King ES	69.90%	92.47%
Edmunds ES	68.40%	88.82%
Carver ES	67.20%	93.19%
Monroe ES	65.30%	77.67%
McKinley ES	63.70%	90.20%
Findley ES	62.50%	92.18%
Madison ES	60.40%	78.62%
Cattell ES	59.60%	80.23%
Capitol View ES	59.00%	86.66%
Hiatt/Hi MS**	58.50%	90.91%
Harding MS	56.20%	83.58%
River Woods ES	56.00%	60.00%
Perkins ES	50.60%	62.69%
Willard ES	49.20%	93.46%
Oak Park ES	49.10%	80.49%
North HS***	48.70%	71.03%
Hoover HS	47.80%	55.54%
Howe ES	47.40%	71.38%
Jackson ES	47.30%	70.40%
Callanan MS	47.20%	58.21%
Lovejoy ES	46.70%	83.82%
Garton ES	46.10%	76.33%
Morris ES	46.10%	72.83%
Weeks MS	45.90%	70.56%
Windsor ES	45.10%	65.87%
Meredith MS	45.10%	60.40%
Hubbell ES	40.60%	50.27%
Woodlawn ES	40.00%	63.33%
Roosevelt HS	38.50%	36.15%
East HS	38.40%	59.30%

School Name	Minority Student Percentage	Free/Reduced Price Lunch Student Percentage
Greenwood ES	38.30%	46.71%
Hoyt MS	36.60%	81.53%
Scavo HS	35.30%	81.73%
Walnut Street ES	34.10%	42.86%
Hillis ES	34.00%	56.84%
South Union ES	33.20%	66.60%
Stowe ES	30.20%	85.54%
McCombs MS	29.50%	81.53%
Merrill MS	27.80%	35.53%
Lincoln HS	25.30%	45.89%
Downtown ES	24.60%	15.67%
Park Ave. ES	23.50%	62.53%
Brody MS	23.00%	42.28%
Goodrell MS	22.90%	46.64%
Brubaker ES	19.60%	69.21%
Studebaker ES	19.60%	55.96%
Hanawalt ES	17.60%	25.33%
Wright ES	16.20%	53.38%
Cowles ES	15.90%	12.15%
Phillips ES	9.10%	40.00%
Pleasant Hill ES	8.10%	35.50%
Jefferson ES	7.10%	7.84%
Average School Distribution	40.92%	64.06%
Correlation Between Minority Students and Free/Reduced-Price Lunch Students		0.762077483

* ES = elementary school

** MS = middle school

*** HS = high school

Note: All numbers were taken from a report issued by the Des Moines Public School District for the School Board to consider during its meeting to discuss potential diversity plans on February 7, 2008. This report is available at <http://www.dmps.k12.ia.us/facts/freereducedlunch.pdf>. The above chart only includes schools that reported both the percentage of minority students and the percentage of students qualifying for a free or reduced-price lunch.